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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8644 OF 2004

M/s.N.M.Joshi and Associates Petitioners
versus
Mrs.Meghana Chandrashekhar Sohoni Respondent

Mr.Prathamesh Bhangarde for petitioners.

Mr.H.Bhave i/byBhave & Co. for respondent nos.1, 2 and 4.

CORAM : A.S.OKA, J.

DATE : 29th June 2007

PC :

1. Heard advocates appearing for the parties. By this petition under Article 227 of the Constitution of India, the petitioner has taken an exception to the order dated 11th August 2004 passed by the learned Trial Judge. The petitioner in this writ petition is the original first defendant in a Summary Suit filed by the first respondent. By the order impugned, in a money suit filed by the first respondent, the petitioner has been granted a conditional leave to defend the suit subject to deposit of a sum of

Rs.6.00 lakh in the Trial Court within two months from the date of the order.

2. The submission of learned advocate for the petitioner is that the claim of the first respondent was secured in the form of Kivale Property the cost of which is more than Rs.11.00 lakh. The submission is that in view of the security which is already available, there was no occasion for the Trial Court to grant conditional leave to defend and this was a fit case where unconditional leave ought to have been granted.

3. I have considered the submissions. The Trial Court has placed reliance on letter dated 20th April 2002 sent on behalf of petitioner to first respondent. The material part of the said letter reads thus :-

> "Re: Development Agreement for Plot 3, Pinpole Nilakh, Pune.
>
> Sub: Payment of Balance Amounts towards Development Rights.
>
> Madam,
>
> Reference to our mutual discussions in my office today morning regarding the captioned topic please note that we can make the balance payment in instalments only and one time payment is not possible due to recession. We will make the

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payment as follows :

i) Rs.1,50,000/- (Rupees One Lakhs Fifty Thousand Only) by 26.04.2002 by M.T. to your account No.0151-0006009-042. The United Western Bank Ltd; Malad, Mumbai (103 Mamledar Wadi)

ii) Balance payment will be made on or before 30.07.2002 by M.T. to your account."

4. In view of what is stated in the said letter, the learned Trial Court has passed an order granting conditional leave subject to deposit of Rs.6.00 lakh.

5. In view of what is stated in the said letter, it is not possible to interfere with the discretionary order passed by the Trial Court.

6. The petition is accordingly rejected. However, time to deposit the amount of Rs.6.00 lakh is extended by eight weeks from today. No further time will be granted.

(A.S.OKA, J.)